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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE STEVEN CASTRO HURTADO,

Defendant and Appellant.

B220080

(Los Angeles County
Super. Ct. No. BA300462)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Monica Bachner, Judge. Affirmed.

Murray A. Rosenberg, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Zee Rodriguez and
Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

George Steven Castro Hurtado appeals from the judgment entered following his convictions by jury on two counts of kidnapping (Pen. Code, § 207, subd. (a); counts 1 & 2), two counts of kidnapping for ransom (Pen. Code, § 209, subd. (a); counts 3 & 4), count 5 – torture (Pen. Code, § 206) with infliction of great bodily injury (Pen. Code, § 12022.7, subd. (a)), count 6 – assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), and two counts of false imprisonment by violence (Pen. Code, §§ 236, 237; counts 7 & 8). The court sentenced appellant to prison for a term of life with the possibility of parole as to each of counts 3 and 4, and a term of life as to count 5,¹ with each of said terms to be served consecutively. The court stayed the terms on the remaining counts. We affirm the judgment.

FACTUAL SUMMARY

1. People's Evidence.

Viewed in accordance with the usual rules on appeal (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established that prior to March 27, 2006, Geno Castro told Gunther Morreale that Castro had been robbed of about \$1 million worth of cocaine. Castro told his father, Victor Navas, that Castro was going to straighten out a problem. Castro said he was going to meet with appellant but speak with someone else. Veronica Torres lived with Morreale and her relatives. A few days before March 27, 2006, Castro told Torres that drugs which appellant had given to Castro had disappeared from Castro's house.

Castro and appellant met at a McDonald's restaurant. After the two left the restaurant, Castro was knocked unconscious and kidnapped. Navas speculated that appellant, Castro's cousin, had been involved in Castro's disappearance.

During the morning of March 27, 2006, a van approached Torres near her home. Rupert Roe exited the van and asked Torres if she knew Castro, Morreale, and a person

¹ The court stated as to each of counts 3, 4, and 5 that the minimum term would be seven years. This minimum parole eligibility term was mandated by Penal Code section 3046.

named Flash. After Torres indicated she did, Roe and another man in the van kidnapped her and drove away.

A Samoan with a gun next to him was already in the van. Roe and the Samoan drove around and asked if Torres knew where Morreale and Flash were. The men drove to Flash's residence and then to the Burbank Mall, where Morreale worked. About 9:00 a.m., Torres used her cell phone to surreptitiously communicate her predicament to Morreale.

About 30 minutes after the van arrived at the mall, Morreale arrived and entered the van. Morreale asked Roe and the Samoan to release Torres. The men indicated they would not release Torres until they got their cocaine back. Torres and Morreale repeatedly begged Roe and the Samoan to release Torres and Morreale, but Roe and the Samoan would not release them.

Roe and the Samoan drove the van about 30 minutes, then parked. After another 30 minutes, appellant entered the van. Appellant was very demanding and very angry. Appellant asked Torres where his "stuff" was, and told her if he did not get it, he would kill her. Torres was crying and did not know what he was talking about. Torres asked appellant to let her go, but appellant said no. Appellant asked Morreale for the stuff but Morreale denied knowing anything. Roe, the Samoan, and appellant made Torres and Morreale lower their heads and they all went to a house.

Torres testified that when she was with appellant, he said "they had [Castro] and they were going to hurt him." Torres also testified appellant said "[Castro] . . . confessed that [Castro] took the drugs and that [Morreale] took the drugs and Flash [was] involved."

Torres and Morreale were taken to a two-bedroom house in Carson. Roe, the Samoan, and appellant made Morreale exit the van, and Roe made Morreale accompany him into the house. The Samoan and appellant drove around with Torres for perhaps 45 minutes, then parked outside the house. Appellant entered the house and Roe watched Torres in the van. At some point, Roe reentered the house.

The Samoan took Morreale and threw him into a bedroom. There was blood in the bedroom. Morreale testified the Samoan left the bedroom and “they” told Morreale to wait. Morreale heard someone say, “You have company, [Castro].” A person referred to as the Columbian arrived, and Morreale testified he heard someone say, “You want to see [Castro]? Because now we’re going to find out who’s really lying, who’s telling the truth.”

The door of the bedroom where Castro was located was open, and Morreale could see Castro. The Columbian, wearing a ski mask, told Castro, “He’s here now. Okay. Now you’re going to give us the stuff. This is the person.” The Columbian asked Castro if Castro knew where the Columbian’s stuff was. Castro denied knowing and said “It was me and Flash.” Morreale testified that “they” began assaulting Castro. Castro was brutally beaten.

Morreale testified that “they” later brought Morreale into the bedroom with Castro. Castro said, “No, it was me and Flash.” The men began torturing Morreale, binding his hands and legs with a cable. The Columbian spoke to the Samoan, and the Samoan began hitting Morreale with a whip. Morreale testified that “they” told Morreale to tell them where the stuff was, and asked, “you’re going to take this for [Castro]?” They also said they could hurt Torres. Morreale did not know where the stuff was.

Morreale testified that after “they” stopped hitting him with a cord, the Columbian pulled out a machete, put it against Morreale’s chest, and stated, “if you don’t tell me, I’m going to start cutting you.” The Columbian repeatedly questioned Morreale. Morreale testified (1) the Columbian was asking Morreale where the Columbian’s stuff was and (2) Morreale would reply no. Morreale then testified, “And then he would let the machete fall on my chest several times.” The Columbian then began hitting Morreale with the machete. Morreale testified the Columbian was “throwing it like this and hitting me on the side.”

The Columbian subsequently spoke with the Samoan, and the Samoan began throwing Morreale against the walls. Castro said, “no, it wasn’t [Morreale]. It was only me and Flash.” The men said they were going to get Flash and took Morreale to the other

bedroom. Morreale could see Castro in the other bedroom. Morreale testified “And [Castro] told me, don’t tell them— they’re serious. Tell them that we did it, . . . And they were going to kill us.”

Roe exited the house and asked Torres to go inside because Castro and Morreale had something to tell her. Torres was taken to a bedroom where Castro was. Castro’s hands and feet were bound and he had something like a bag over his head. Appellant removed the bag, revealing that Castro’s face had been brutally beaten. Appellant told Castro to “tell us what you have to say.” Torres testified “[Castro] said . . . he was involved in the disappearance of the drugs and that [Morreale] knew and Flash knew.” A man wearing a ski mask entered the room. He told Torres that he would let her go if she returned home and told everyone what had happened according to what Castro and appellant had said. Torres said she would.

Morreale was in the other bedroom. His arms and feet were bound, he was on the floor, and his face had been brutally beaten. Torres was taken to Morreale’s location. Appellant entered and told Morreale to tell Torres what Morreale had to tell her. Morreale denied knowing anything. Appellant and the Columbian asked Morreale where the stuff was. Appellant began assaulting Morreale in front of the Columbian. The Columbian had ordered the Samoan to hit Morreale. Morreale testified the Columbian did not order appellant to hit Morreale, but “[appellant] just did it.” Appellant, using profanity, called Morreale a liar and repeatedly kicked him. Torres exited the room while appellant continued to kick Morreale.

Appellant and Roe took Torres to the van and drove away. The two men wanted to know where Torres’s daughter was and wanted to pick her up from school. Torres made other arrangements by phone. Torres was taken to a McDonald’s restaurant where she unsuccessfully tried to have police summoned.

Appellant continued to threaten Torres. He told her that, if she did not tell people that Castro and Morreale had been involved in this matter, Morreale would be killed and Torres would not return home. Appellant also said he knew where Torres lived and where her daughter was. Appellant and Roe eventually received a call informing them

that Morreale had escaped. A person in the house had followed Morreale and fired a gun at him. Morreale eventually went to the police.

About 7:00 or 8:00 p.m., appellant called Navas and said appellant would release Torres. Appellant and Roe stopped the van at Echo Park. Navas entered the van and asked appellant and Roe to release Torres, and Navas indicated he would stay with appellant. Torres testified appellant did not immediately release her, but eventually Navas convinced appellant to release her. Torres went home and called the police. During the time Torres was with appellant, no one pointed a gun at appellant, and he had a cell phone on his person. Castro was eventually released, and he and Navas went to the police. A police detective interviewed Torres and Morreale, and both said appellant hit or kicked Morreale.

2. Defense Evidence.

In defense, a police detective testified he interviewed Morreale, who stated as follows. A Black male tortured Morreale, and Morreale did not hear anyone else in the house. The beatings had just begun when Morreale heard the van drive away, and once it drove away, he did not see Torres again. Morreale did not mention appellant's name to the detective.

Appellant testified as follows. Shortly after appellant's father died in March 2006, a "gentleman" approached appellant and asked him to hold a box for him. Appellant complied, but later gave the box to Castro to hold. A week later, Castro told appellant the box had been stolen. Appellant relayed this to the gentleman, and the gentleman said he wanted to meet with appellant and Castro. The three met at a McDonald's, and Castro said he thought he knew who had stolen the box. The gentleman asked Castro if Castro could show them, Castro replied yes, and Castro voluntarily went with the gentleman. Appellant did not know Castro had been kidnapped.

The next day, appellant received a phone call. The persons calling indicated they had not believed Castro, so they had kidnapped him. The callers indicated they wanted to meet appellant at an In-N-Out Burger restaurant. Appellant met with a person, and "they" told appellant that they did not believe Castro and thought Castro had something

to do with it. The person told appellant to go with “them” in the car, and there were three suspects with the person. Appellant voluntarily entered the van. A man told appellant “you both better give me my [expletive], or I’m going to kill both of you.” The man told appellant to lower his head, and appellant was eventually taken to a room in a house in Carson. Castro was lying down and his hands and feet were bound. Persons told appellant, “you both [expletive] better tell us where the [expletive] is at, or we’re going to kill both of you.” Appellant was stripped to his underwear, and his hands and legs were bound.

Some individuals threw appellant into a wall. They began beating, torturing, and asking questions of Castro. No one hit appellant, but the Samoan pointed a gun with a silencer at appellant’s legs and suggested if the Samoan did not get an answer, he would shoot appellant. Castro told the gentleman with the ski mask that Castro and Morreale had stolen the box, and Castro mentioned Flash. The gentleman stopped beating Castro, untied appellant, and told appellant to put his clothes on. The gentleman forced appellant to accompany him to find Torres and Morreale while Castro remained in the house. The gentleman told appellant that if the gentleman recovered his stuff, no one would get hurt, but if the gentleman did not, the gentleman would kill appellant and Castro.

Appellant involuntarily went with the gentleman wearing the ski mask, and appellant identified where Torres and Morreale lived. Appellant spent the night in a motel with “the ski mask and the Columbian,” and they both had guns.

Appellant testified that, the next day, “we all” went to Burbank because that was where Morreale worked. Appellant went with “the ski mask, another Columbian, . . . the Samoan, and a guy with a cap with glasses on.” They eventually saw Morreale at the Burbank Mall. Appellant pointed out Morreale because appellant was afraid if appellant had not done so, “they” would kill Castro and appellant, then go after appellant’s family. Appellant later left the mall. Torres and Morreale had not yet been kidnapped.

Appellant testified that “we” returned to the motel. The next day, the kidnappings occurred. Appellant was with the “gentleman with the ski mask and the Columbian.” Appellant knew Torres and Morreale would be kidnapped. Appellant could not contact

the police because the “ski mask” had confiscated appellant’s phone. Appellant was not present during the kidnappings.

Appellant testified that after “they” got Morreale, “the Samoan called the ski mask” and told him so. The “ski mask” told the Samoan, “wait for us. We’re on our way.” Appellant drove with the “ski mask” and the Columbian to Burbank. The man wearing the ski mask used profanity and told appellant, “you’re going to get in that green van, and you better put some sense into them, or I’m going to kill all of you.”

Appellant entered the van and saw Torres and Morreale. Appellant told Torres and Morreale to give “them” their stuff back, “They’re going to kill us all,” and “They have [Castro].”

Once appellant later arrived at the house in Carson, the Samoan pulled Morreale out of the van, leaving appellant, Torres, and a man who had a cap, sunglasses, and a gun. Appellant did not try to escape because they had Castro and because of the man with the gun. The man in the van later made appellant and Torres enter the house. Appellant testified he saw the following persons inside, “the ski mask, it was the Columbian, his cousin, the Samoan, it was a Black guy, and the guy with the cap that escorted us out from the van.” Morreale, Torres, and appellant were in the same room and were threatened. Castro eventually said he stole the narcotics and that Morreale and Flash were involved in the theft.

Torres was crying about her daughter. The “ski mask” ordered appellant to accompany Torres to pick up her daughter, and told the Samoan to accompany Torres and appellant to supervise them. The Samoan had a gun with a silencer. Appellant had been inside the house for only a very short period. During that period, the “ski mask” ordered the Samoan to hit Morreale, the Samoan hit Morreale a few times, and the “guy with the ski mask” started hitting Morreale. That was all appellant saw. Appellant never kicked Morreale. Appellant never made threats about Torres’s daughter and never threatened Torres. Appellant, the Samoan, and Torres went to a McDonalds, but appellant could not contact police because the Samoan had confiscated appellant’s phone and if appellant had done anything, Castro would have been killed.

Appellant did not voluntarily participate in any crimes committed during late March of 2006. Whatever acts appellant did during those days when he was kidnapped, he did because, if he had not done them, appellant and Castro would have been killed.²

ISSUES

Appellant claims (1) there is insufficient evidence to support his convictions and (2) Penal Code section 654 barred multiple punishment on counts 4 and 5.

DISCUSSION

1. Sufficient Evidence Supported Appellant's Convictions.

Appellant claims there is insufficient evidence to support his convictions. He argues in essence that (1) there were multiple conflicts in the testimony of Torres and Morreale with the result their testimony was implausible and (2) appellant's actions were excused because he acted under duress.

However, as to appellant's first argument, "To warrant the rejection of the testimony that has been believed by the trier of fact, the testimony must be inherently improbable. [Citation.] There must exist either a physical impossibility that it is true, or its falsity must be apparent without resorting to inferences or deductions. [Citations.] Conflicts and even testimony that is subject to justifiable suspicion do not justify the reversal of a judgment. [Citation.]" (*People v. Meals* (1975) 48 Cal.App.3d 215, 222.)

² The court, using a modified CALCRIM No. 3402, instructed the jury on the defense of duress. That instruction read: "The defendant is not guilty of kidnapping, kidnapping for ransom, torture, assault with a deadly weapon, or false imprisonment by violence, if he acted under duress. The defendant acted under duress if, because of threat or menace, he believed that his or someone else's life would be in immediate danger if he refused a demand or request to commit the crimes. The demand or request may have been express or implied. [¶] The defendant's belief that his or someone else's life was in immediate danger must have been reasonable. When deciding whether the defendant's belief was reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in the same position as the defendant would have believed. [¶] A threat of future harm is not sufficient; the danger to life must have been immediate. [¶] The People must prove beyond a reasonable doubt that the defendant did not act under duress. If the People have not met this burden, you must find the defendant not guilty of kidnapping, kidnapping for ransom, torture, assault with a deadly weapon, or false imprisonment by violence."

We have considered appellant's argument; nonetheless, under the above standards, appellant's sufficiency challenge fails.

As to appellant's second argument, appellant does not expressly claim that, absent the above mentioned alleged implausibility and absent the alleged duress, there is insufficient evidence appellant committed the crimes of which he was convicted. He claims there is insufficient evidence because he acted under duress. However, "Our power as an appellate court begins and ends with the determination whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, to support the judgment. [Citation.]" (*People v. Hernandez* (1990) 219 Cal.App.3d 1177, 1181-1182.)

We have discussed the pertinent facts and conclude there was substantial evidence that appellant committed the crimes of which he was convicted and did not act under duress. The fact there might have been other evidence, even substantial evidence, to the contrary does not compel a contrary conclusion.

2. Multiple Punishment on Counts 4 and 5 Was Proper.

During the July 31, 2009 sentencing hearing, the court indicated it would give consecutive sentences on counts 4 and 5 because they were separate offenses and separate in time. The court indicated that although both offenses had the same purpose, "to provide information, presumably" the torture offense had a separate impact from a mere kidnapping "because a kidnapping doesn't have to have torture involved with it."

Appellant claims Penal Code section 654 barred multiple punishment on counts 4 and 5. We disagree. "Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.]" (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) This includes the trial court's implied findings. (*People v. Nguyen* (1988) 204 Cal.App.3d 181, 190 (*Nguyen*).)

In the present case there was substantial evidence that appellant, as an accomplice, kidnapped Morreale for ransom at least as early as when appellant, Roe, and the Samoan took Morreale in the van to the Carson house. The torturing of Morreale, which included infliction of great bodily injury, occurred later. After Morreale was taken into the house, the Samoan threw him into a bedroom and told him to wait. Castro was brutally beaten. The assailants then brought Morreale into the bedroom where Castro was. Morreale, bound, was tortured with a whip and machete.

The Columbian subsequently spoke with the Samoan, and the Samoan began throwing Morreale against walls. Morreale was later taken to the other bedroom and the assault upon him temporarily stopped. Later, Torres was brought to Morreale. Morreale was still bound and his face had been brutally beaten. Appellant told Morreale to tell Torres what Morreale had to tell her, but Morreale denied knowing anything. Appellant and the Columbian asked where the stuff was, then appellant began assaulting Morreale. Appellant later hit Morreale without having been ordered to do so by the Columbian. Appellant also repeatedly kicked Morreale.

We conclude the kidnapping of Morreale for ransom (count 4) and the torturing of Morreale (count 5) were separated by considerable periods of time during which reflection was possible. The fact appellant assisted multiple torturing episodes, each of which evinced a separate intent to do violence, precludes application of Penal Code section 654. Moreover, during the commission of torture (count 5), appellant inflicted gratuitous violence upon a helpless and unresisting victim, i.e., Morreale. Penal Code section 654 did not bar multiple punishment on counts 4 and 5. (Cf. *People v. Surdi* (1995) 35 Cal.App.4th 685, 688-690; *Nguyen, supra*, 204 Cal.App.3d at pp. 189-193.)

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.